

IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	BK 14-40708
	)	
CJ FEEDYARD, LLC,	)	Chapter 12
	)	
Debtor.	)	

**MOTION FOR REMOVAL OF DEBTOR AS DEBTOR IN POSSESSION**

COMES NOW U.S. Bank, N.A., as Special Administrator of the Estate of Charles L. Gabel, an interested party, by and through its counsel of record, and hereby moves for the removal of James Gabel as manager of the Debtor, and for removal of the Debtor as Debtor in Possession in this case pursuant to 11 U.S.C. § 1204, and in support of this Motion states as follows:

1. The Movant is an equity interest holder in the Debtor and consequently is an interested party in this case.
2. While Movant is an equity interest holder, Movant has been blocked from having any management control over the company.
3. Good cause exists for the removal of the Debtor as Debtor in Possession for each of the following reasons:
  - a. The Debtor has operated in a manner contrary to the best interests of the Debtor's bankruptcy estate and not in conformance with Debtor's confirmed plan of reorganization.
  - b. Debtor's confirmed plan of reorganization provided essentially that Debtor would operate as a landlord, collect enough rents and other monies to timely pay taxes and service secured creditors of

Debtor. Since confirmation of Debtor's plan, Debtor has failed to pay real estate taxes when due and has failed to timely pay secured creditors. Debtor's failure to pay as primary secured creditor, Farm Credit Services, has resulted in Farm Credit Services obtaining relief from the stay and selling more than 50% of Debtor's assets, to the detriment of the Debtor and other creditors of Debtor.

c. Debtor has twice filed motions with this Court requesting permission to sell a part of its assets. The first motion was denied and the second motion has not yet been heard; however, upon information and belief Debtor will withdraw its motion since it will be moot due to the foreclosure sale by Debtor's creditor, Farm Credit Services. In connection with Debtor's request to sell part of its assets, Debtor, upon information and belief, was given an earnest deposit of \$125,000 for Debtor's interest in real property commonly referred to as the "Vrbka Farm." Upon information and belief, Debtor has spent the \$125,000 earnest deposit. Debtor has provided a partial accounting for the \$125,000, and, a copy of which is attached to this Motion as Exhibit "1" and by this reference incorporated herein. Debtor's purported accounting provides, in part, that \$66,000 of the earnest money was spent as an operating loan to Gabel Feedyard LLC and \$45,000 was spent as an operating loan to GJ Managed LLC. Upon information and belief both Gabel Feedyard LLC and GJ Managed LLC are other LLCs owned and operated by

the manager of Debtor, James Gabel. James Gabel never sought nor received permission from this Court to accept and/or expend these funds and, it now appears that the Vrbka Farm will be sold in the foreclosure sale by the secured creditor, Farm Credit services and it is likely that the property will be sold for less than fair market value. The inappropriate use of the earnest deposit will create another post-confirmation claim against the estate.

d. The Debtor has specifically ignored previous Court orders to provide an accounting (ECF No. 167). Debtor has provided only a partial accounting and has failed to complete the accounting as ordered.

e. Debtor in Possession is an LLC. The managing member of the LLC is James Gabel. James Gabel has failed to properly manage Debtor as specifically set forth above and is incompetent to continue to manage the affairs of the Debtor and if not removed as Debtor in Possession and manager of the LLC, James Gabel will continue to harm the Debtor and waste the Debtor's remaining assets.

f. Movant, U.S. Bank, N.A., as Special Administrator of the Estate of Charles L. Gabel, an interested party, is an appropriate person to replace James Gabel as managing member of the LLC and to manage the Debtor's affairs in the bankruptcy. The Estate of Charles L. Gabel holds an equity interest in Debtor of at least 25%.

It would be in the best interest of the Debtor's estate and all creditors of the Debtor if James Gabel was removed as managing member of the Debtor, and as Debtor in Possession. U.S. Bank, N.A., as Special Administrator is a qualified entity and a qualified and appropriate entity to serve in such capacity.

WHEREFORE, Movant requests the removal of James Gabel as manager of the Debtor, and removal of James Gabel as manager of the Debtor's LLC, and the Court order U.S. Bank, N.A., as Special Administrator of the Estate of Charles L. Gabel, to be substituted for Debtor in Possession and as managing member of Debtor's LLC, and for further relief as the Court deems just and equitable.

Dated this 19th day of January, 2018.

U.S. Bank, N.A., as Special Administrator  
of the Estate of Charles L. Gable, an  
Equity Interest Holder,

By: 

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Frederick D. Stehlik, #15481  
Zachary W. Lutz-Priefert, #25092  
Gross & Welch, P.C., L.L.O.  
2120 South 72<sup>nd</sup> Street  
Omaha, NE 68124  
(402) 392-1500  
Facsimile: (402) 392-8101  
[zlutzpriefert@grosswelch.com](mailto:zlutzpriefert@grosswelch.com)  
Attorneys for U.S. Bank

**NOTICE OF OBJECTION DEADLINE**

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that Counsel for U.S. Bank has filed this "Motion for Removal of Debtor as Debtor in Possession" in the above-captioned case.

You are further advised this notice is being furnished to you pursuant to Nebraska Rule of Bankruptcy Procedure 9013-1, and that any objection, resistance or request for hearing with respect to the above-referenced pleading must be filed on or before **February 9, 2018** with the Clerk of the Bankruptcy Court, Roman L. Hruska Courthouse, 111 S. 18<sup>th</sup> Plaza, Suite 1125, Omaha, NE.

If the resistance period expires without the filing of any resistance or request for hearing, the Court will consider the Motion without further notice or a hearing.

If a timely resistance or request for hearing is filed and served, the Clerk shall schedule a hearing upon not less than eleven (11) days notice.

All resistances to the motion shall set forth the specific factual and legal basis and conclude with a particular request for relief.

By Frederick D. Stehlik

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2018, I caused filing of the foregoing with the Clerk of the Bankruptcy Court using the CM/ECF system, and further certify that on the same date I mailed by United States Postal Service, postage prepaid, the document to the non-CM/ECF participants listed on the Debtor's mailing matrix attached hereto as Exhibit "A".

Frederick D. Stehlik  
Frederick D. Stehlik



Label Matrix for local noticing  
0867-4  
Case 14-40708-TLS  
District of Nebraska  
Lincoln Office  
Fri Jan 19 15:27:12 CST 2018

Anchor Acceptance  
301 Steamboat Drive, Suite 101  
Dakota Dunes, SD 57049-5299

CJ Feedyard, LLC  
660 South Street  
Osceola, NE 68651

Cornerstone Bank  
PO Box 69  
529 N Lincoln Avenue  
York, NE 68467-2944

Farm Credit Services of America, FLCA  
c/o Jim R. Titus  
4645 Normal Blvd., Suite 272  
Lincoln, NE 68506-5823

First National Bank & Trust of Columbus  
P.O. Box 730  
Columbus, NE 68602-0730

Heritage Bank  
1101 12th Street  
Aurora, NE 68818-2015

Markowitz, LLC  
c/o Brian S. Kruse  
REMBOLT LUDTKE LLP  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508-2888

Situs, LLC  
c/o Dave Swan  
1230 Aries Drive, Suite A  
Lincoln, NE 68512-9615

US Bankruptcy Court  
460 Federal Building  
100 Centennial Mall North  
Lincoln, NE 68508-3814

Anchor Acceptance Corp  
PO Box 860  
North Sioux City, SD 57049-0860

Charles L Gabel  
16117 Middle Island Drive Lot 23  
South Bend, NE 68058-4313

Charles L Gabel Revocable Trust  
James L Gabel Trustee  
640 South Street  
Osceola, NE 68651-4425

Clear Creek Resort West LLC  
101 Clear Creek W  
Columbus, NE 68601-7661

Cornerstone Bank  
529 Lincoln Avenue  
York, NE 68467

Craig D. Brouillette  
12835 R Road  
Osceola, NE 68651-4412

Farm Credit Leasing  
600 Highway 169 S.  
Suite 300  
Minneapolis, MN 55426-1246

Farm Credit Leasing Services Corporation  
4645 Normal Blvd., Ste. 272  
Lincoln, NE 68506-5823

Farm Credit Services of America  
4865 Old Monastery Road  
Columbus, NE 68601-5201

Farm Credit Services of America, FLCA  
4645 Normal Blvd., Ste. 272  
Lincoln, NE 68506-5823

First National Bank of Columbus  
PO Box 730  
Columbus, NE 68602-0730

Heritage Bank, Conservator for Charles L. Ga  
c/o Matthew V. Rusch  
Erickson Sederstrom, P.C.  
10330 Regency Parkway Dr., Suite 100  
Omaha, NE 68114-3761

James L Gabel  
640 South Street  
Osceola, NE 68651-4425

Markowitz, LLC  
c/o Brian S. Kruse  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508-2839

Polk County Treasurer  
PO Box 315  
Osceola, NE 68651-0315

SHELLS RE Inc.  
PO Box 212  
Oshkosh, NE 69154-0212

Situs, LLC  
c/o Brian S. Kruse  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508-2839

Tac Investment Inc.  
PO Box 212  
Oshkosh, NE 69154-0212

Bruce C. Barnhart  
12100 W Center Rd  
Suite 519  
Omaha, NE 68144-3960

James A. Overcash  
Chapter 12 Trustee  
301 South 13th Street  
Suite 500  
Lincoln, NE 68508-2578

EXHIBIT

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A

Jerry Jensen  
Acting Assistant UST  
U.S. Trustee's Office  
111 South 18th Plz, Suite 1140  
Omaha, NE 68102-1321

John Stock  
Stock Realty and Auction Co.  
BigIron Realty  
4121 23rd Street  
Columbus, NE 68601-8503

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)U.S. Bank, N.A.

(u)Charles L. Gabel

(d)Craig D Brouillette  
12835 R Rd  
Osceola, NE 68651-4412

End of Label Matrix  
Mailable recipients 31  
Bypassed recipients 3  
Total 34